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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/592,007	06/12/2000	Francis Tufaro	08582/009002	4193
21559	7590	11/07/2003	EXAMINER	
CLARK & ELBING LLP 101 FEDERAL STREET BOSTON, MA 02110			SCHULTZ, JAMES	
			ART UNIT	PAPER NUMBER
			1635	

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/592,007

Applicant(s)

TUFARO ET AL.

Examiner

J. Douglas Schultz

Art Unit

1635

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 02 September 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

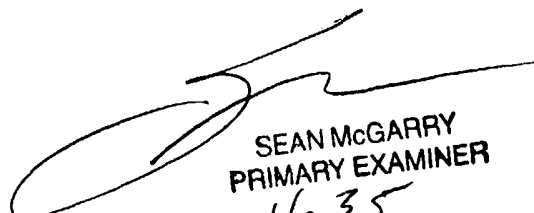
Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: Applicants present no arguments that have not been addressed in the advisory action dated October 16, 2002, and the final Office action dated February 26, 2003. Briefly, applicants' arguments center on the assertion that none of the references provide motivation for their combination. For example, applicants state that "There simply is no suggestion or motivation to introduce viruses into cells in vivo from Hodgson, as was stated in the Office Action". However, the following is a quote from the introduction of Hodgson, at page 339: "One approach to improving gene therapy is to combine the relative safety and efficiency of transfection with the permanency of stable transduction methods. This could be done either by combining purified viral enzymes, nucleic acids, and transfection reagents (comprising a synthetic viral particle) or alternatively by starting with particles and enhancing transduction frequencies biochemically. The latter approach is potentially easier to accomplish. For example, adenovirus has been used to deliver DNA (on the outside of viral particles) to cells via the endosomal pathway and retroviral vectors have been modified via the attachment of ligands for cellular receptors (such as peptide hormones and by the incorporation of chimeric envelope glycoproteins or chemically coupled ligands in order to facilitate their attachment and entry into cells. As is evident from this passage, Hodgson clearly contemplates and discusses gene therapy, i.e. in vivo whole animal administration of viral particles containing DNA. Applicants arguments are thus not considered convincing .



SEAN MCGARRY
PRIMARY EXAMINER
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